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**SENATE BILL 3**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003**

**INTRODUCED BY**

John Pinto

**AN ACT**

**RELATING TO HIGHWAY PROJECT FINANCING; PROVIDING FOR  
CONSTRUCTION AND IMPROVEMENTS TO STATEWIDE TRANSPORTATION  
INFRASTRUCTURE; INCREASING FUEL TAXES; ADJUSTING DISTRIBUTIONS  
OF CERTAIN TAX PROCEEDS; AUTHORIZING THE ISSUANCE OF STATE  
HIGHWAY BONDS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,  
Chapter 5, Section 2, as amended) is amended to read:**

**"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--**

**A. A distribution pursuant to Section 7-1-6.1 NMSA  
1978 shall be made to the state aviation fund in an amount  
equal to four and thirty-one hundredths percent of the taxable  
gross receipts attributable to the sale of fuel specially**

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1 prepared and sold for use in turboprop or jet-type engines as  
2 determined by the department.

3 B. A distribution pursuant to Section 7-1-6.1 NMSA  
4 1978 shall be made to the state aviation fund in an amount  
5 equal to [~~twenty-six hundredths~~] two-tenths percent of gasoline  
6 taxes, exclusive of penalties and interest, collected pursuant  
7 to the Gasoline Tax Act.

8 C. From July 1, 2002 through June 30, 2007, a  
9 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
10 made to the state aviation fund in an amount equal to forty-six  
11 thousandths percent of the net receipts attributable to the  
12 gross receipts tax distributable to the general fund."

13 Section 2. Section 7-1-6.8 NMSA 1978 (being Laws 1983,  
14 Chapter 211, Section 13, as amended) is amended to read:

15 "7-1-6.8. DISTRIBUTION--MOTORBOAT FUEL TAX FUND.--A  
16 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
17 made to the motorboat fuel tax fund in an amount equal to  
18 [~~thirteen hundredths of one~~] one-tenth percent of the net  
19 receipts attributable to the gasoline tax."

20 Section 3. Section 7-1-6.9 NMSA 1978 (being Laws 1991,  
21 Chapter 9, Section 11, as amended) is amended to read:

22 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO  
23 MUNICIPALITIES AND COUNTIES.--

24 A. A distribution pursuant to Section 7-1-6.1 NMSA  
25 1978 shall be made in an amount equal to [~~ten and thirty-eight~~]

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1 eight and two-hundredths percent of the net receipts  
2 attributable to the taxes, exclusive of penalties and interest,  
3 imposed by the Gasoline Tax Act.

4 B. [~~Except as provided in Subsection D of this~~  
5 ~~section~~] The amount determined in Subsection A of this section  
6 shall be distributed as follows:

7 (1) ninety percent of the amount shall be paid  
8 to the treasurers of municipalities and H class counties in the  
9 proportion that the taxable motor fuel sales in each of the  
10 municipalities and H class counties bears to the aggregate  
11 taxable motor fuel sales in all of these municipalities and H  
12 class counties; and

13 (2) ten percent of the amount shall be paid to  
14 the treasurers of the counties, including H class counties, in  
15 the proportion that the taxable motor fuel sales outside of  
16 incorporated municipalities in each of the counties bears to  
17 the aggregate taxable motor fuel sales outside of incorporated  
18 municipalities in all of the counties.

19 C. Except as provided in Subsection D of this  
20 section, this distribution shall be paid into a separate road  
21 fund in the municipal treasury or county road fund for  
22 expenditure only for construction, reconstruction, resurfacing  
23 or other improvement or maintenance of public roads, streets,  
24 alleys or bridges, including right-of-way and materials  
25 acquisition. Money distributed pursuant to this section may be

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1 used by a municipality or county to provide matching funds for  
2 projects subject to cooperative agreements entered into with  
3 the state [~~highway and~~] department of transportation  
4 [~~department~~] pursuant to Section 67-3-28 NMSA 1978. Any  
5 municipality or H class county that has created or that creates  
6 a "street improvement fund" to which gasoline tax revenues or  
7 distributions are irrevocably pledged under Sections 3-34-1  
8 through 3-34-4 NMSA 1978 or that has pledged all or a portion  
9 of gasoline tax revenues or distributions to the payment of  
10 bonds shall receive its proportion of the distribution of  
11 revenues under this section impressed with and subject to these  
12 pledges.

13 D. This distribution may be paid into a separate  
14 road fund or the general fund of the municipality or county if  
15 the municipality has a population less than three thousand or  
16 the county has a population less than four thousand."

17 Section 4. Section 7-1-6.19 NMSA 1978 (being Laws 1991,  
18 Chapter 9, Section 15, as amended) is amended to read:

19 "7-1-6.19. DISTRIBUTION--COUNTY GOVERNMENT ROAD FUND  
20 CREATED. --

21 A. There is created in the state treasury the  
22 "county government road fund".

23 B. A distribution pursuant to Section 7-1-6.1 NMSA  
24 1978 shall be made to the county government road fund in an  
25 amount equal to [~~five and seventy-six~~] four and forty-five

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1 hundredths percent of the net receipts attributable to the  
2 gasoline tax. "

3 Section 5. Section 7-1-6.27 NMSA 1978 (being Laws 1991,  
4 Chapter 9, Section 20, as amended) is amended to read:

5 "7-1-6.27. DISTRIBUTION-- MUNICIPAL ROADS. --

6 A. A distribution pursuant to Section 7-1-6.1 NMSA  
7 1978 shall be made to municipalities for the purposes and  
8 amounts specified in this section in an aggregate amount equal  
9 to [~~five and seventy-six~~] four and forty-five hundredths  
10 percent of the net receipts attributable to the gasoline tax.

11 B. The distribution authorized in this section  
12 shall be used for the following purposes:

13 (1) reconstructing, resurfacing, ~~maintaining~~,  
14 repairing or otherwise improving existing alleys, streets,  
15 roads or bridges, or any combination of the foregoing; or  
16 laying off, opening, constructing or otherwise acquiring new  
17 alleys, streets, roads or bridges, or any combination of the  
18 foregoing; provided that any of the foregoing improvements may  
19 include, but are not limited to, the acquisition of rights of  
20 way;

21 (2) to provide matching funds for projects  
22 subject to cooperative agreements with the state [~~highway and~~]  
23 department of transportation [~~department~~] pursuant to Section  
24 67-3-28 NMSA 1978; and

25 (3) for expenses of purchasing, maintaining

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1 and operating transit operations and facilities, for the  
2 operation of a transit authority established by the Municipal  
3 Transit Law and for the operation of a vehicle emission  
4 inspection program. A municipality may engage in the business  
5 of the transportation of passengers and property within the  
6 political subdivision by whatever means the municipality may  
7 decide and may acquire cars, trucks, motor buses and other  
8 equipment necessary for operating the business. A municipality  
9 may acquire land, erect buildings and equip the buildings with  
10 all the necessary machinery and facilities for the operation,  
11 maintenance, modification, repair and storage of the cars,  
12 trucks, motor buses and other equipment needed. A municipality  
13 may do all things necessary for the acquisition and the conduct  
14 of the business of public transportation.

15 C. For the purposes of this section:

16 (1) "computed distribution amount" means the  
17 distribution amount calculated for a municipality for a month  
18 pursuant to Paragraph (2) of Subsection D of this section prior  
19 to any adjustments to the amount due to the provisions of  
20 Subsections E and F of this section;

21 (2) "floor amount" means four hundred  
22 seventeen dollars (\$417);

23 (3) "floor municipality" means a municipality  
24 whose computed distribution amount is less than the floor  
25 amount; and

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1 (4) "full distribution municipality" means a  
2 municipality whose population at the last federal decennial  
3 census was at least two hundred thousand.

4 D. Subject to the provisions of Subsections E and F  
5 of this section, each municipality shall be distributed a  
6 portion of the aggregate amount distributable under this  
7 section in an amount equal to the greater of:

- 8 (1) the floor amount; or
- 9 (2) eighty-five percent of the aggregate  
10 amount distributable under this section [~~times~~] multiplied by a  
11 fraction, the numerator of which is the municipality's reported  
12 taxable gallons of gasoline for the immediately preceding state  
13 fiscal year and the denominator of which is the reported total  
14 taxable gallons for all municipalities for the same period.

15 E. Fifteen percent of the aggregate amount  
16 distributable under this section shall be referred to as the  
17 "redistribution amount". Beginning in August 1990, and each  
18 month thereafter, from the redistribution amount there shall be  
19 taken an amount sufficient to increase the computed  
20 distribution amount of every floor municipality to the floor  
21 amount. In the event that the redistribution amount is  
22 insufficient for this purpose, the computed distribution amount  
23 for each floor municipality shall be increased by an amount  
24 equal to the redistribution amount [~~times~~] multiplied by a  
25 fraction, the numerator of which is the difference between the

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1 floor amount and the municipality's computed distribution  
2 amount and the denominator of which is the difference between  
3 the product of the floor amount multiplied by the number of  
4 floor municipalities and the total of the computed distribution  
5 amounts for all floor municipalities.

6 F. If a balance remains after the redistribution  
7 amount has been reduced pursuant to Subsection E of this  
8 section, there shall be added to the computed distribution  
9 amount of each municipality that is neither a full distribution  
10 municipality nor a floor municipality an amount that equals the  
11 balance of the redistribution amount [~~times~~] multiplied by a  
12 fraction, the numerator of which is the computed distribution  
13 amount of the municipality and the denominator of which is the  
14 sum of the computed distribution amounts of all municipalities  
15 that are neither full distribution municipalities nor floor  
16 municipalities. "

17 Section 6. Section 7-1-6.28 NMSA 1978 (being Laws 1991,  
18 Chapter 9, Section 22, as amended) is amended to read:

19 "7-1-6.28. DISTRIBUTION--MUNICIPAL ARTERIAL PROGRAM OF  
20 LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to  
21 Section 7-1-6.1 NMSA 1978 shall be made to the municipal  
22 arterial program of the local governments road fund created in  
23 Section 67-3-28.2 NMSA 1978 in an amount equal to one and  
24 [~~forty-four~~] eleven-hundredths percent of the net receipts  
25 attributable to the gasoline tax. "

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1           Section 7. Section 7-1-6.39 NMSA 1978 (being Laws 1995,  
2 Chapter 6, Section 9) is amended to read:

3           "7-1-6.39. DISTRIBUTION OF SPECIAL FUEL EXCISE TAX TO  
4 LOCAL GOVERNMENTS ROAD FUND. --A distribution pursuant to  
5 Section 7-1-6.1 NMSA 1978 shall be made to the local  
6 governments road fund in an amount equal to [~~eleven and eleven~~  
7 ~~hundredths~~] nine and nine-hundredths percent of the net  
8 receipts attributable to the taxes, exclusive of penalties and  
9 interest, from the special fuel excise tax imposed by the  
10 Special Fuels Supplier Tax Act. "

11           Section 8. Section 7-13-3 NMSA 1978 (being Laws 1971,  
12 Chapter 207, Section 3, as amended) is amended to read:

13           "7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
14 "GASOLINE TAX".--

15           A. For the privilege of receiving gasoline in this  
16 state, [~~there is imposed~~] an excise tax is imposed at a rate  
17 provided in Subsection B of this section on each gallon of  
18 gasoline received in New Mexico.

19           B. The tax imposed by Subsection A of this section  
20 shall be [~~seventeen cents (\$.17)~~] twenty-two cents (\$.22) per  
21 gallon received in New Mexico.

22           C. The tax imposed by this section may be called  
23 the "gasoline tax". "

24           Section 9. Section 7-16A-3 NMSA 1978 (being Laws 1992,  
25 Chapter 51, Section 3, as amended) is amended to read:

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1           "7-16A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
2 SPECIAL FUEL EXCISE TAX. --

3           A. For the privilege of receiving or using special  
4 fuel in this state, there is imposed an excise tax at a rate  
5 provided in Subsection B of this section on each gallon of  
6 special fuel received in New Mexico.

7           B. The tax imposed by Subsection A of this section  
8 shall be [~~eighteen cents (\$.18)~~] twenty-two cents (\$.22) per  
9 gallon of special fuel received or used in New Mexico.

10          C. The tax imposed by this section may be called  
11 the "special fuel excise tax". "

12          Section 10. Section 67-3-59.1 NMSA 1978 (being Laws 1989,  
13 Chapter 157, Section 1, as amended) is amended to read:

14          "67-3-59.1. STATE HIGHWAY DEBENTURES--ISSUANCE--LIMITS--  
15 APPROVAL--COUPONS. --

16          A. In order to provide funds to finance state  
17 highway projects, including state highway projects that are  
18 required for the waste isolation pilot project and are eligible  
19 for federal reimbursement or payment as authorized by federal  
20 legislation, the state transportation commission is authorized,  
21 subject to the limitations of this section, to issue bonds from  
22 time to time, payable from federal funds not otherwise  
23 obligated that are paid into the state road fund and the  
24 proceeds of the collection of taxes and fees that are required  
25 by law to be paid into the state road fund and not otherwise

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1 pledged solely to the payment of outstanding bonds and  
2 debentures.

3 B. Except as provided in [~~Subsections C and D~~]  
4 Subsection C of this section, the total aggregate outstanding  
5 principal amount of bonds issued from time to time pursuant to  
6 this section, secured by or payable from federal funds not  
7 otherwise obligated that are paid into the state road fund and  
8 the proceeds from the collection of taxes and fees required by  
9 law to be paid into the state road fund, shall not, without  
10 additional authorization of the state legislature, exceed one  
11 hundred fifty million dollars (\$150,000,000) at any given time,  
12 subject to the following provisions:

13 (1) the total aggregate outstanding principal  
14 amount of bonds issued for state highway projects that are  
15 required for the waste isolation pilot project and are eligible  
16 for federal reimbursement or payment as authorized by federal  
17 legislation shall not exceed one hundred million dollars  
18 (\$100,000,000); and

19 (2) the total aggregate outstanding principal  
20 amount of bonds issued for state highway projects other than  
21 state highway projects that are required for the waste  
22 isolation pilot project and are eligible for federal  
23 reimbursement or payment as authorized by federal legislation  
24 shall not exceed fifty million dollars (\$50,000,000).

25 C. Upon specific authorization and appropriation by

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1 the legislature, [~~and subject to the limitations of Subsection~~  
2 ~~D of this section~~] an additional amount of bonds may be issued  
3 pursuant to this section for state highway projects, to be  
4 secured by or payable from taxes or fees required by law to be  
5 paid into the state road fund and federal funds not otherwise  
6 obligated that are paid into the state road fund, and, as  
7 applicable, taxes or fees required by law to be paid into the  
8 highway infrastructure fund, as follows:

9 (1) an aggregate outstanding principal amount  
10 of bonds, not to exceed six hundred twenty-four million dollars  
11 (\$624,000,000), for major highway infrastructure projects for  
12 which the department has, prior to January 1, 1998, submitted  
13 or initiated the process of submitting a plan to the federal  
14 highway administration for innovative financing pursuant to 23  
15 USCA Sections 122 and 307;

16 (2) an aggregate outstanding principal amount  
17 of bonds, not to exceed one hundred million dollars  
18 (\$100,000,000), for state highway projects that are required  
19 for the waste isolation pilot project and are eligible for  
20 federal reimbursement; and

21 (3) an aggregate outstanding principal amount  
22 of bonds, not to exceed [~~four hundred million dollars~~  
23 ~~(\$400,000,000)] one hundred fifty million dollars  
24 (\$150,000,000), for other state highway projects.~~

25 [~~D. The total amount of bonds that may be issued by~~

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1 ~~the state transportation commission for state highway projects~~  
2 ~~pursuant to Subsection C of this section shall not exceed a~~  
3 ~~total aggregate outstanding principal amount of:~~

4 ~~(1) three hundred million dollars~~  
5 ~~(\$300,000,000) prior to July 1, 1999;~~

6 ~~(2) six hundred million dollars (\$600,000,000)~~  
7 ~~from July 1, 1999 through June 30, 2000;~~

8 ~~(3) nine hundred million dollars~~  
9 ~~(\$900,000,000) from July 1, 2000 through June 30, 2001; and~~

10 ~~(4) one billion one hundred twenty-four~~  
11 ~~million dollars (\$1,124,000,000) after June 30, 2001.]~~

12 ~~[E.]~~ D. The state transportation commission may  
13 issue bonds to refund other bonds issued pursuant to this  
14 section by exchange or current or advance refunding.

15 ~~[F.]~~ E. Each series of bonds shall have a maturity  
16 of no more than twenty-five years from the date of issuance.  
17 The state transportation commission shall determine all other  
18 terms, covenants and conditions of the bonds; provided that the  
19 bonds shall not be issued pursuant to this section unless the  
20 state board of finance approves the issuance of the bonds and  
21 the principal amount of and interest rate or maximum net  
22 effective interest rate on the bonds.

23 ~~[G.]~~ F. The bonds shall be executed with the manual  
24 or facsimile signature of the chairman of the state  
25 transportation commission, countersigned by the state treasurer

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1 and attested to by the secretary of the state transportation  
2 commission, with the seal of the state transportation  
3 commission imprinted or otherwise affixed to the bonds.

4 [~~H.~~] G. Proceeds of the bonds may be used to pay  
5 expenses incurred in the preparation, issuance and sale of the  
6 bonds and, together with the earnings on the proceeds of the  
7 bonds, may be used to pay rebate, penalty, interest and other  
8 obligations relating to the bonds and the proceeds of the bonds  
9 under the Internal Revenue Code of 1986, as amended.

10 [~~H.~~] H. The bonds may be sold at a public or  
11 negotiated sale at, above or below par or through the New  
12 Mexico finance authority. A negotiated sale shall be made with  
13 one or more investment bankers whose services are obtained  
14 through a competitive proposal process. For any sale, the  
15 state transportation commission or the New Mexico finance  
16 authority shall also procure the services of any financial  
17 advisor or bond counsel through a competitive proposal process.  
18 If sold at public sale, a notice of the time and place of sale  
19 shall be published in a newspaper of general circulation in the  
20 state, and in any other newspaper determined in the resolution  
21 authorizing the issuance of the bonds, once each week for two  
22 consecutive weeks prior to the date of sale. The bonds may be  
23 purchased by the state treasurer or state investment officer.

24 [~~J.~~] I. This section is full authority for the  
25 issuance and sale of the bonds, and the bonds shall not be

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1 invalid for any irregularity or defect in the proceedings for  
2 their issuance and sale and shall be incontestable in the hands  
3 of bona fide purchasers or holders of the bond for value.

4 [K-] J. The bonds shall be legal investments for a  
5 person or board charged with the investment of public funds and  
6 may be accepted as security for a deposit of public money and,  
7 with the interest thereon, are exempt from taxation by the  
8 state and a political subdivision or agency of the state.

9 [L-] K. Any law authorizing the imposition or  
10 distribution of taxes or fees paid into the state road fund or  
11 the highway infrastructure fund or that affects those taxes and  
12 fees shall not be amended or repealed or otherwise directly or  
13 indirectly modified so as to impair outstanding bonds secured  
14 by a pledge of revenues from those taxes and fees paid into the  
15 state road fund or the highway infrastructure fund, unless the  
16 bonds have been discharged in full or provisions have been made  
17 for a full discharge. In addition, while any bonds issued by  
18 the state transportation commission pursuant to the provisions  
19 of this section remain outstanding, the powers or duties of the  
20 commission shall not be diminished or impaired in any manner  
21 that will affect adversely the interests and rights of the  
22 holder of such bonds.

23 [M-] L. In contracting for state highway projects  
24 to be paid in whole or in part with proceeds of bonds  
25 authorized by this section, the department shall require that

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1 any sand, gravel, caliche or similar material needed for the  
2 project shall, if practicable, be mined from state lands. Each  
3 contract shall provide that the contractor notify the  
4 commissioner of public lands of the need for the material and  
5 that, through lease or purchase, the material shall be mined  
6 from state lands if:

7 (1) the material needed is available from  
8 state lands in the vicinity of the project;

9 (2) the commissioner determines that the lease  
10 or purchase is in the best interest of the state land trust  
11 beneficiaries; and

12 (3) the cost to the contractor for the  
13 material, including the costs of transportation, is competitive  
14 with other available material from non-state lands.

15 [~~N-~~] M Bonds issued pursuant to this section shall  
16 be paid solely from federal funds not otherwise obligated and  
17 taxes and fees deposited into the state road fund and, as  
18 applicable, the highway infrastructure fund, and shall not  
19 constitute a general obligation of the state."

20 Section 11. [NEW MATERIAL] STATE HIGHWAY BONDS--PURPOSE  
21 FOR WHICH ISSUED--APPROPRIATION OF PROCEEDS.--

22 A. The state transportation commission may issue  
23 and sell state highway bonds in compliance with the provisions  
24 of Section 67-3-59.1 NMSA 1978 in an amount not to exceed the  
25 total of the amount authorized for the purpose specified in

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1 this section when the commission determines the need for the  
2 issuance of the bonds. The state transportation commission  
3 shall schedule the issuance and sale of the bonds in the most  
4 expeditious and economic manner possible upon a finding by the  
5 commission that the project has been developed sufficiently to  
6 justify the issuance and that the project can proceed to  
7 contract within a reasonable time. One hundred fifty million  
8 dollars (\$150,000,000) of the proceeds from the sale of the  
9 bonds is appropriated to the state department of transportation  
10 for the improvement and widening of United States highway 491  
11 to a four-lane highway from Tohatchi to Shiprock.

12 B. For the purposes of this section, "improvement"  
13 includes preliminary surveys and assessments, planning,  
14 designing, engineering, construction and acquisition of rights  
15 of way.

16 Section 12. APPLICABILITY. --The provisions of Sections 1  
17 through 7 of this act apply to revenue received by the taxation  
18 and revenue department on or after February 1, 2004.

19 Section 13. EFFECTIVE DATE. --

20 A. The effective date of the provisions of Sections  
21 1 through 7 of this act is February 1, 2004.

22 B. The effective date of the provisions of Sections  
23 8 through 11 of this act is January 1, 2004.

24 Section 14. EMERGENCY. --It is necessary for the public  
25 peace, health and safety that this act take effect immediately.

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